

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Derrick and Kelly Thompson	:	
	:	
v.	:	C-2018-3006429
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Alphonso Arnold, III
Special Agent

INTRODUCTION

This Initial Decision grants the Complainants’ request for a payment arrangement. This Decision reinstates and extends the Complainants’ prior payment arrangement, finding that they defaulted upon the prior payment arrangement as a result of experiencing a significant change in circumstance.

HISTORY OF THE PROCEEDING

On December 10, 2018, Derrick and Kelly Thompson (“Thompsons” or Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met Ed or Respondent) requesting a payment arrangement to prevent termination of their service.

On December 20, 2018, Met Ed filed its Answer, averring that the Complainants should not receive another payment arrangement due to having received and defaulted upon four

prior payment arrangements. Met Ed requested that the Commission deny and dismiss the Complaint.

By Hearing Notice served on the parties on December 28, 2018, the Commission scheduled this matter for a telephonic hearing on March 7, 2019, at 10:00 a.m., and assigned the case to me as presiding officer.¹

A Prehearing Order was served on the parties on January 23, 2019, addressing, inter alia, the procedures applicable to the hearing.

I conducted the March 7, 2019 telephonic hearing as scheduled. Kelly Thompson appeared *pro se*. Attorney John L. Munsch appeared on behalf of Met Ed. Discussions were held off the record between the parties and the parties agreed to continue the scheduled hearing. The continuance request was granted on the record and memorialized in writing through an Order Granting Continuance served upon the parties on March 8, 2019.

By Further Hearing Notice served upon the parties on March 7, 2019, the Commission scheduled this matter for a further telephonic hearing on April 23, 2019, at 10:00 a.m.

I conducted the April 23, 2019 further telephonic hearing as scheduled. Ms. Thompson and Attorney Munsch were again present for the hearing. Ms. Thompson informed Attorney Munsch and me that she was dealing with the effects of the flu which caused her to be hospitalized on April 19, 2019. Therefore, she requested that the further hearing be continued. Met Ed objected to the continuance request because the matter had been continued once before and because the account balance continued to grow due to the fact that no payments have been made on the account in question since October 2018. The continuance request was granted on the record over Met Ed's objection.

¹ The December 28, 2018 Hearing Notice listed an incorrect phone number for the Complainants; therefore, a Corrected Hearing Notice was served on the parties on January 11, 2019 correcting the Complainants' phone number.

By Further Hearing Notice served upon the parties on April 24, 2019, the Commission scheduled this matter for a further telephonic hearing on May 16, 2019, at 10:00 a.m.

I conducted the May 16, 2019, telephonic hearing as scheduled. Ms. Thompson was present for the hearing and testified in support of the Complaint. Ms. Thompson sponsored no exhibits for the record. Attorney John L. Munsch was present at the hearing on behalf of Met Ed and presented the testimony of Alison Walker, a customer service compliance specialist employed by FirstEnergy.² Ms. Walker sponsored the following six exhibits, all of which were admitted into the record:

- Met Ed Exhibit 1 – Updated Account Statement
- Met Ed Exhibit 2 – History of Payment Arrangements
- Met Ed Exhibit 3 – BCS Case 3670204
- Met Ed Exhibit 4 – BCS Case 3520158
- Met Ed Exhibit 5 – Customer Contacts
- Met Ed Exhibit 6 – Termination/Collection History

The record³ closed on May 16, 2019, following the conclusion of the telephonic hearing. For the reasons explained below, the Complaint will be granted.

FINDINGS OF FACT

1. The Complainants are Derrick and Kelly Thompson.
2. The Respondent is Metropolitan Edison Company.
3. The Complainants receive service from Met Ed at 229 Ravenhill Road, Tamiment, PA (service address).

² Met Ed is a subsidiary of FirstEnergy Service Company.

³ All of the telephonic hearings in this matter were recorded over the phone by means of a tape recorder without the presence of a Court Reporter.

4. The Thompsons reside at their service address with their two minor daughters.
5. The only source of income for the Thompson household comes from Ms. Thompson's wages, whereby she receives a gross monthly income of \$4,500.
6. Mr. Thompson has a heart condition, which has led to him being out of work since 2014.
7. Ms. Thompson was in and out of work from the fall of 2017 to December 2018 due to having to care for her terminally ill mother.
8. On April 28, 2017, the Thompsons filed an Informal Complaint with the Bureau of Consumer Services (BCS) at BCS No. 3520158 seeking a payment arrangement. (Met Ed Exhibit 4, pp. 1-4).
9. The gross household monthly income reported for the Thompson household at BCS No. 3520158 was \$2,000 for a household of three. (Met Ed Exhibit 4, p. 1).
10. On May 4, 2017, the BCS granted the Thompsons a level 1 payment arrangement⁴ at BCS No. 3520158. (Met Exhibit 4, pp. 3, 4).
11. Under the payment arrangement at BCS No. 3520158, the Thompsons were to pay \$570 per month (consisting of \$489 budget bill + \$81 arrearages), beginning with the June 2017 bill due date. (Met Ed Exhibit 4, p. 4).
12. The size of the unpaid balance to be resolved under the payment arrangement at BCS No. 3520158 was \$4,835. (Met Ed Exhibit 4, p. 4).

⁴ A "level 1" payment arrangement is a payment arrangement whereby the customer is given five years to resolve their unpaid balance. 66 Pa.C.S. § 1405(b)(1).

13. On November 27, 2018, the Thompsons filed an Informal Complaint with the BCS at BCS No. 3670204 seeking a payment arrangement. (Met Ed Exhibit 3, pp. 1-4).

14. The gross household monthly income reported for the Thompson household at BCS No. 3670204 was \$2,400 for a household of five. (Met Ed Exhibit 3, p. 1).

15. On December 7, 2018 the BCS denied the Thompsons' payment arrangement request at BCS No. 3670204. (Met Ed Exhibit 3, p. 4).

16. The Thompsons defaulted on three Company-issued payment arrangements and the payment arrangement issued at BCS No. 3520158. (Met Ed Exhibit 2).

17. There have been eight payments made towards the account in question since March 4, 2017 in an amount totaling \$3,234.20. (Met Ed Exhibit 1, pp. 1-3).

18. No payments have been made towards the account since October 15, 2018. (Met Ed Exhibit 1, p. 3).

19. The Thompsons outstanding balance as of the day of the hearing was \$12,973.05.

DISCUSSION

Section 701 of the Public Utility Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem

described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwth. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwth. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

The Thompsons made a request for relief from the Commission in the form of a Commission-issued payment arrangement. Therefore, the burden of proof is on the Thompsons to show that they are eligible for a Commission-issued payment arrangement.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwth. 1982). Public utilities are entitled to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; Neal v. Philadelphia Gas Works, Docket No. Z-00871874 (Final Order

entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Opinion and Order entered March 17, 2004).

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

§ 1405. Payment arrangements

(a) General rule.--The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

(b) Length of payment arrangements.--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(a)-(b). “Household income” is defined as the following:

§ 1403. Definitions

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(d) Number of payment arrangements.--Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change in income” is defined as the following:

§ 1403. Definitions

“Change in income.” A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403. Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement

and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

§ 1403. Definitions

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

The Thompsons defaulted on the previous payment arrangement issued to them at BCS No. 3520158. The arrangement issued at BCS No. 3520158 became a Commission-issued payment after the Thompsons failed to appeal the BCS decision,⁵ and the arrangement defaulted when the Thompsons failed to make payments under the terms of the payment arrangement. Given their default on this prior Commission-issued payment arrangement, the Thompsons in this instant Formal Complaint are seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement can be established for the Thompsons only if they have experienced a change in income.

Ms. Thompson testified at the hearing that the Thompson household has a gross monthly household income of \$4,500 for a household of four. The gross monthly household income of the Thompson household reported in BCS No. 3520158 was \$2,000 for a household of

⁵ (3) *Resolution*. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171--56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

three. Thus, the gross monthly household income of the Thompson household has increased following the issuance of their Commission-issued payment arrangement. As cited, “change in income” is defined as having experienced a decrease in household income, not an increase in household income. 66 Pa.C.S. § 1403. Therefore, the Thompsons have not experienced the change of income required to be granted a second Commission-issued payment arrangement in this matter.

Although the Commission cannot establish a second Commission-issued payment arrangement for the Thompsons, the Commission-issued payment arrangement at BCS No. 3520158 can be reinstated and extended if the Thompsons defaulted on the payment arrangement as a result of a significant change in circumstance. Reinstatement and extension of a payment arrangement is available only for those customers with a household income of less than 300% of the Federal poverty level. The Thompsons gross monthly household income of \$4,500 for a household of four is below 300% of the Federal poverty level.⁶ Therefore, the Commission can consider whether the Thompsons are eligible for reinstatement and extension of the payment arrangement issued to them at BCS No. 3520158.

Ms. Thompson testified that she cared for her terminally ill mother from the fall of 2017 until December 2018. Ms. Thompson’s mother moved into the Thompson household during this period. Also during this period, Ms. Thompson was in and out of work. Ms. Thompson testified that she struggled to pay her electric bills during this time due to her not having a steady flow of income during this period. Ms. Thompson has been the only source of income for the Thompson household since her husband was last employed in 2014 due to his own set of illnesses.

Given the evidence provided, the Thompsons have experienced significant change in circumstances causing them to default on the payment arrangement issued to them at BCS No. 3520158. Shortly following the issuance of the payment arrangement, the Thompson household lost a significant amount of income as a result of Ms. Thompson having to frequently miss work

⁶ Federal Register, Vol. 84, No. 22 at 1168 (February 1, 2019). Also available at <http://aspe.hhs.gov/poverty> (providing that 300% of the Federal poverty level for a household of four is \$6,438).

to care for her mother, satisfying the first significant change in circumstance criteria, which requires the onset of a chronic or acute illness resulting in a significant loss in the customer's household income. Furthermore, in order to be cared for, Ms. Thompson's mother moved into the Thompson household. Thus, the Thompson household experienced an increase in the number of dependents in the household, satisfying the fourth significant change in circumstance criteria, which requires an increase in the customer's number of dependents in the household.⁷ These significant change in circumstances caused the Thompsons to default on the payment arrangement issued to them at BCS No. 3520158.

The Thompsons have met their burden of proving that they experienced a significant change in circumstance making them eligible for reinstatement and extension of the payment arrangement issued to them at BCS No. 3520158. The payment arrangement, as originally issued at BCS No. 3520158, is reinstated and extended in accordance with Section 1405(e) of Chapter 14.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982).

⁷ I note that the Thompson household was reported to have a household size of five at the time the Informal Complaint was filed at BCS No. 3670204 on November 27, 2018. This is an increase from the household size of three reported at BCS No. 3520158, filed on April 28, 2017.

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.

5. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).

6. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. 66 Pa.C.S. § 1405(d).

7. A “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

8. If a customer defaults on a payment arrangement as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

9. A “significant change in circumstance” is any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (1) the onset of a chronic or acute illness resulting in a significant loss in the customer's household income, (2) catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household, (3) loss of the customer's residence, or (4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

10. The Complainants met their burden of proving that they are eligible for reinstatement and extension of their prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Derrick and Kelly Thompson's Complaint against Metropolitan Edison Company at Docket No. C-2018-3006429 is granted.
2. That, in accordance with Section 1405(e) of the Public Utility Code, 66 Pa.C.S. § 1405(e), the payment arrangement issued by the Bureau of Consumer Services on May 4, 2017 in BCS Case No. 3520158 is reinstated, and the remaining term is extended for an initial period of six months following the entry of a final Commission order in this case.
3. That as long as the Thompsons maintain the terms of the reinstated payment arrangement, Metropolitan Edison Company shall not suspend or terminate their utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.
4. That, if the Thompsons do not keep the reinstated payment arrangement, Metropolitan Edison Company is authorized to suspend or terminate their service in accordance with the Commission's statutes and regulations.
5. That the docket at Docket No. C-2018-3006429 is marked closed.

Date: June 10, 2019

/s/
Alphonso Arnold, III
Special Agent